

RESOLUTION NO. ####

**A RESOLUTION OF THE PLANNING COMMISSION OF THE
CITY OF NEWPORT BEACH APPROVING VARIANCE NO.
VA2012-001 FOR AN ADDITION TO A SINGLE-FAMILY
RESIDENCE LOCATED AT 245 EVENING CANYON ROAD
(PA2012-027).**

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Daniel Kashani representing the property owner, Cornerstone Securities, LLC, with respect to property located at 245 Evening Canyon Road, and legally described as Lot 132 of Tract 1116, in the City of Newport Beach, County of Orange, State of California, as per map recorded in book 36, pages 19-20, inclusive of miscellaneous maps, in the office of the County Recorder of said County requesting approval of a variance.
2. The applicant requests a variance to allow a 2,000-square-foot addition to an existing 2,757-square-foot nonconforming single-family residence. The structure is nonconforming because the existing residence encroaches between seven and 11 inches into the required 6-foot southwesterly side yard setback. A variance is requested to allow a 73 percent addition and a second floor addition that would project into the southerly side yard setback, in-line with the existing nonconforming residence.
3. The approval of the variance to allow the 5-foot 1-inch side yard setback at the southwesterly side yard no longer renders the existing structure nonconforming. Therefore, an additional variance for the size of the addition to the existing structure is not required.
4. The subject property is located within the R-1-6,000 (Single-Unit Residential) Zoning District and the General Plan Land Use Element category is RS-D (Single-Unit Residential Detached).
5. The subject property is located within the coastal zone. The Coastal Land Use Plan category is RSD-A (Single-Unit Residential Detached).
6. A public hearing was held on May 3, 2012, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. At the May 3, 2012, Planning Commission Meeting, the Planning Commission took action to continue this item to the June 7, 2012, Planning Commission Meeting to comply with the noticing provisions of the NBMC. However, a public notice had already been mailed out for the May 17, 2012, Planning Commission Meeting. Therefore, at the May 17, 2012, meeting, the Planning Commission again continued the item to the June 7, 2012, Planning Commission meeting agenda.

7. A public hearing was held on June 7, 2012, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. The project is categorically exempt under Section 15305, of the California Environmental Quality Act (CEQA) Guidelines – New Construction or Conversion of Small Structures).
2. The Class 3 exemption includes the construction of one single-family residence. The proposed development involves an addition to an existing single-family residence. Therefore, the proposed project qualifies for an exemption under Class 3.

SECTION 3. REQUIRED FINDINGS.

In accordance with Section 20.52.090.F (Findings and Decision) of the Newport Beach Municipal Code, the following findings and facts in support of a variance are set forth:

Finding:

- A. *That there are special or unique circumstances or conditions applicable to the subject property (e.g. location, shape, size, surrounding, topography, or other physical features) that do not apply generally to other properties in the vicinity under an identical zoning classification.*

Facts in Support of Finding:

- A-1. The existing lot is 55 feet in width and the current zoning code requires 6-foot side yard setback areas. The lot was permitted to be developed with a single-family residence with a side yard setback equal to 10 percent of the lot width in 1952, consistent with the Zoning provisions at that time. Therefore, the structure is considered legal nonconforming.
- A-2. The property is adjacent to Buck Gully and is subject to primary and accessory structure development string lines which limit construction further down the slope and limits the depth of the developable area. Development further down the slope is limited and compliance with the setback requirements would require significant additional alterations at the entry level of the existing structure beyond the proposed scope of work.
- A-3. Strict application of the setback standard would not allow the exterior wall of the proposed addition to be supported by the existing building wall and foundation directly below. From a structural standpoint, additional framing and foundation elements would be necessary to properly support the addition in compliance with the required

setbacks. The walls and foundation below would need to be completely reconstructed or replaced, which is a significant departure from the desired scope of construction. Additions and two-story construction are allowed on any R-1-6,000 designated property by the Zoning Ordinance and approval of the Variance is necessary to preserve that right without significant added construction and cost to comply with the setback standard.

Finding:

- B. *That strict compliance with Zoning Code requirements would deprive the subject property of privileges enjoyed by other properties in the vicinity and under an identical zoning classification.*

Facts in Support of Finding:

- B-1. The previous Zoning Code allowed properties within this zone to construct additions in-line with the existing structure by right. The current Zoning Code does not provide a provision that allows additions in-line with existing nonconforming structures that project into the side yard setback within the R-1-6,000 zoning district.
- B-2. Strict application of the setback standard would not allow the exterior wall of the proposed addition to be supported by the existing building wall and foundation directly below. From a structural standpoint, additional framing and foundation elements would be necessary to properly support the addition in compliance with the required setbacks. The walls and foundation below would need to be completely reconstructed or replaced, which is a significant departure from the desired scope of construction. Additions and two-story construction are allowed on any R-1-6,000 designated property by the Zoning Ordinance and approval of the Variance is necessary to preserve that right without significant added construction and cost to comply with the setback standard.
- B-3. The approval of the variance to allow the 5-foot 1-inch side yard setback at the southwesterly side yard no longer renders the existing structure nonconforming. Therefore, an additional variance for the size of the addition to the existing structure is not required.

Finding:

- C. *That the granting of the Variance is necessary for the preservation and enjoyment of substantial property rights of the applicant.*

Facts in Support of Finding:

- C-1. Strict compliance with the side yard setback standard given the unique circumstances identified in the facts significantly limits the ability of the property owner to create a two-story home thereby depriving a substantial property right afforded by other R-1-6,000 lots in the Shore Cliffs Community.

Finding:

- D. *That the granting of the Variance will not constitute a grant of special privilege inconsistent with the limitations on other properties in the vicinity and in the same zoning district.*

Facts in Support of Finding:

- D-1. The granting of the Variance would not constitute a special privilege inconsistent with the limitations upon other properties zoned R-1-6,000 as it allows the property owner to maintain equity with other homes in Shore Cliffs where additions have occurred. The proposed project is consistent with historic development in the neighborhood. Neighboring homes in Shore Cliffs are non-conforming and many were allowed additions in-line with non-conforming setbacks pursuant to previous Zoning Code.
- D-2. The granting of the Variance does not relieve the requirement to obtain required Building Permits and any corrective work deemed necessary by the Building Official.

Finding:

- E. *That the granting of the Variance will not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood.*

Facts in Support of Finding:

- E-1. The abutting properties are developed with single-story residences and the proposed addition does not have large windows that directly face the homes on either side, and therefore, privacy will not be compromised.
- E-2. The design does not significantly affect air and solar access. The proposed addition is approximately 24 feet high at its highest point. The height complies with the 24-foot height limit for flat roof structures and is well below the 29-foot height limit for sloped rooflines.
- E-3. The overall design, based upon the proposed plans, meets residential design criteria provided within Section 20.48.180.B.2 (Design Criteria) by avoiding long unarticulated walls, providing architectural treatment of all elevations, and emphasizing the entry and window elements at the front façade.
- E-4. The approval of this Variance is conditioned such that the applicant is required to obtain all necessary permits in accordance with the Building Code and other applicable Codes.

Finding:

- F. *Granting of the Variance will not be in conflict with the intent and purpose of this Section, this Zoning Code, the General Plan, or any applicable specific plan.*

Facts in Support of Finding:

- F-1. The principal purpose of setback standards is to provide adequate separation of buildings for light, access and ventilation. The existing building provides 5-foot and 6-foot setbacks at the side property lines. Approval of the Variance will not diminish this setback area as the addition is on the second floor. Abutting residences also provide 5-foot side yard setback areas; therefore, there will be 10 feet separating the project and abutting buildings. Adequate separation of the proposed addition from these adjoining properties will be maintained consistent with the intent of the Zoning Code.
- F-2. The subject property is designated by the Land Use Element of the General Plan RS-D (Single-Unit Residential, Detached) and allows detached single-family dwellings. Approval of the Variance will not affect density or intensity of uses.
- F-3. The subject property is zoned R-1-6,000 (Single-Unit Residential), which provides single-family residential uses and approval of the Variance will not affect density or intensity of uses.
- F-4. The subject property is not located within a specific plan area.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Planning Commission of the City of Newport Beach hereby approves Variance No. VA2012-001, subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
2. This action shall become final and effective fourteen days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

PASSED, APPROVED AND ADOPTED THIS 7th DAY OF JUNE, 2012.

AYES:

NOES:

ABSTAIN:

ABSENT:

BY: _____
Michael Toerge, Chairman

BY: _____
Fred Ameri, Secretary

EXHIBIT "A"

CONDITIONS OF APPROVAL

PLANNING

1. The development shall be in substantial conformance with the approved site plan, floor plans and building elevations stamped and dated with the date of this approval. (Except as modified by applicable conditions of approval.)
2. Variance No. VA2012-001 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.91.050 of the Newport Beach Municipal Code, unless an extension is otherwise granted.
3. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
4. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Variance.
5. This Variance may be modified or revoked by the City Council or Planning Commission should they determine that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
6. Prior to issuance of building permits, the applicant shall submit to the Planning Division an additional copy of the approved architectural plans for inclusion in the Variance file. The plans shall be identical to those approved by all City departments for building permit issuance. The approved copy shall include architectural sheets only and shall be reduced in size to 11 inches by 17 inches. The plans shall accurately depict the elements approved by this Variance and shall highlight the approved elements such that they are readily discernible from other elements of the plans.
7. All landscape materials and irrigation systems shall be maintained in accordance with the approved landscape plan. All landscaped areas shall be maintained in a healthy and growing condition and shall receive regular pruning, fertilizing, mowing and trimming. All landscaped areas shall be kept free of weeds and debris. All irrigation systems shall be kept operable, including adjustments, replacements, repairs, and cleaning as part of regular maintenance.
8. Prior to the issuance of a building permit, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.

9. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the property owner or agent.
10. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the Cornerstone Securities Residential Addition including, but not limited to, Variance No. VA2012-001 (PA2012-027). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

Fire Department Conditions

11. New Buildings, alterations, and additions located in any Fire Hazard Severity Zone or any Wildland-Urban Interface Area shall comply with the provisions of C.B.C. Chapter 7, Section 704A, Ignition Resistant Construction. Construction requirements apply to all sides of the structure.
12. Any landscape on the side of the structure that is adjacent to wildland area shall meet fuel modification guidelines.

Building Division Conditions

13. The applicant is required to obtain all applicable permits from the City's Building Division and Fire Department. The construction plans must comply with the most recent, City-adopted version of the California Building Code. The construction plans must meet all applicable State Disabilities Access requirements. Approval from the Orange County Health Department is required prior to the issuance of a building permit.
14. Construction activities shall comply with Section 10.28.040 of the Newport Beach Municipal Code, which restricts hours of noise-generating construction activities that produce noise to between the hours of 7:00 a.m. and 6:30 p.m., Monday through Friday and 8:00 a.m. and 6:00 p.m. on Saturday. Noise-generating construction activities are not allowed on Sundays or Holidays.

Public Works Conditions

15. All improvements shall be constructed as required by Ordinance and the Public Works Department.
16. Reconstruct the existing broken and/or otherwise damaged concrete curb and gutter along the Evening Canyon Road frontage.
17. All existing private, non-standard improvements within the public right-of-way and/or extensions of private, non-standard improvements into the public right-of-way fronting the development site shall require an Encroachment Agreement which will require City Council approval (i.e. the short wall along the northerly property line and the decorative driveway approach). Otherwise, the property owner may choose to remove these private improvements through the Encroachment Permit process.
18. All proposed and existing landscaping within the Evening Canyon Road right-of-way shall be a maximum height of 36 inches with the exception of the area 12 inches from the face of curb, which shall have sod or other low growing landscaping to allow for ingress and egress of vehicle passengers. Plans show a 60-inch box Parkinsonia Aculeata/Mexican Palo Verde) and a 24-inch box Agave Americana (Century Plant 'Blue') in the front yard. This landscaping shall be relocated so that the trunks are completely on private property.
19. Per Council Policy L-6, the use of loose gravel is prohibited within the public right-of-way.
20. Per Chapter 13 of the City Municipal Code, the 24-inch box Crepe Myrtle tree (mildew resistant variety i.e., Lagerstroemia or faurei hybrids 'Natchez') shall be planted along the Evening Canyon Road frontage. The plans shall identify exactly the species/size and location where the new street trees will be planted. Per the City Arborist, the applicant has the following options:
 - a. Choose to redesign their landscaping to accommodate the required street tree, or
 - b. Choose to keep the original design and pay for a street tree to be planted elsewhere in the City.
21. A new sewer cleanout shall be installed on the existing sewer lateral per STD-406-L adjacent to the property line in the Evening Canyon Road public right-of-way.
22. An encroachment permit is required for all work activities within the public right-of-way.
23. In case of damage done to public improvements surrounding the development site by private construction, additional reconstruction within the public right-of-way could be required at the discretion of the Public Works Inspector.
24. All on-site drainage shall comply with the latest City Water Quality requirements.

25. County Sanitation District fees shall be paid prior to the issuance of any building permits.